IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MICHAEL JEROME GEMAR, Appellant.	No. 38487-6-II UNPUBLISHED OPINION

Bridgewater, J. — Michael Jerome Gemar appeals his Cowlitz County conviction of felony violation of a no-contact order, challenging the sufficiency of the evidence. We affirm.[1]

FACTS

Gemar has been under orders to have no contact with his mother, Joyce Gemar, at least since December 2006. Prior to this incident, he had violated the orders at least four times.

Sometime in January 2008, Gemar's mother, who was suffering from dementia and other ailments, moved to the residence of her daughter and son-in-law. On February 17, 2008, Gemar brought a plate of food to his sister's house. Billy Thiery, his sister's husband, met him at the door and told him that he was not supposed to be there because of the restraining order. Gemar replied that he knew that, but he just wanted to see his mother to give her the plate of food.

[1] A commissioner of this court initially considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

Thiery told him that he needed to leave, and he did so without incident. Thiery reported the incident to the police, and the State charged Gemar with felony violation of a no-contact order, based on prior convictions of the same offense.

At trial, Gemar admitted that he had taken a plate of food to his sister's house, and that the food was intended for his mother. However, he insisted that he did not know she had moved there, asserting that he simply wanted his sister to give her the food. The jury convicted him as charged.

ANALYSIS

The jury was instructed that Gemar had violated a no-contact order issued pursuant to chapter 10.99 RCW. A violation of a court order issued under that chapter is a class C felony if the offender has at least two prior convictions of violating the provisions of an order issued under chapters 26.50, 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW. *See* RCW 26.50.110(5). Gemar contends that the evidence was not sufficient to prove that his prior violations were of orders issued under any of the statutes listed in RCW 26.50.110(5). He points out that protection orders may be issued under RCW 9A.46.050, which is not listed in that statute.

We review Gemar's challenge under the familiar sufficiency test outlined in *State v. Salinas,* 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) and *State v. Delmarter,* 94 Wn.2d 634, 638, 618 P.2d 99 (1980)

Gemar asserts that the predicate violations are an element of the crime, and the State must therefore prove the statutory authority for the no-contact orders. He relies on *State v. Arthur*, 126 Wn. App. 243, 108 P.3d 169 (2005). The State asserts that our Supreme Court overruled *Arthur* in *State v. Miller*, 156 Wn.2d 23, 123 P.3d 827 (2005), when it affirmed an appellate court

determination that the validity of underlying protection orders is not an essential element of RCW 26.50.110, but rather a question of law to be determined by a judge.

Assuming that the State must prove the statutory authority for the protection order, there is sufficient evidence here to provide that proof. Gemar had previously been found guilty on three separate citations, two of which referred to the order violated as a domestic violence protection order. Such an order would have been issued under chapter 10.99 RCW, one of the statutes listed in RCW 26.50.110(5). While the third citation did not indicate the type of protection order, it cited the same cause number for the protection order as the other two citations.

Gemar also argues that at most, the evidence was sufficient to support only a conviction of attempted violation of a no-contact order because the evidence did not show that he knew his mother was residing at his sister's house and so did not prove that he knowingly violated the distance proscription.

The order specified that Gemar was not to come near or have any contact whatsoever, through others, directly or indirectly, with his mother. It also prohibited him from coming within 100 yards of her residence. Thiery testified that Gemar said he knew he was not supposed to be at his sister's house, but he wanted to give his mother the plate of food he had brought. Thiery also testified that Mrs. Gemar had been living at the house for approximately a month, that defendant Gemar's son knew she lived there, and that many family members had visited her there.

This testimony was sufficient to support a reasonable inference that Gemar knew his mother was living at the house when he went there with the plate of food. The jury was not required to accept his denial of that knowledge, and their credibility determination is not subject to review. *State v. Camarillo,* 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Armstrong, J.

Van Deren, C.J.